

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	DA 03-3876
Petition of ALLTEL Communications, Inc.)	
for Consent to Redefine the Service)	
Areas of Rural Telephone Companies In the)	
State of Wisconsin)	

**COMMENTS OF THE INCUMBENT LOCAL EXCHANGE CARRIERS
DIVISION OF THE WISCONSIN STATE
TELECOMMUNICATIONS ASSOCIATION**

The above-captioned petition by ALLTEL Communications, Inc. (Alltel) is premature, out of step with the recommendation of the Joint Board, and would cause a substantial change in universal service policy on an ad hoc basis. For those reasons the Incumbent Local Exchange Carriers Division of the Wisconsin State Telecommunications Association (ILEC-WSTA)¹ submits these Comments in response to the Federal Communications Commission's (FCC's or Commission's) Wireline Competition Bureau *Public Notice*² and pursuant to the Commission's rules.³ All of the rural telephone companies whose service areas are proposed to be redefined by the Public Service Commission of Wisconsin (PSCW) are members of the ILEC-WSTA.⁴

¹ It is one of the three divisions within the Wisconsin State Telecommunications Association. It is comprised of all 83 Incumbent Local Exchange Carriers (ILEC) that operate in the state of Wisconsin.

² *Public Notice*, CC Docket No. 96-45, DA 03-3876 (rel. Dec. 4, 2003) seeking comments on Alltel's Petition to Redefine Rural Telephone Company Service Areas in the State of Wisconsin.

³ 47 C.F.R. §§1.415 and 1.419.

⁴ Those rural telephone companies are: Amery Telcom Inc., CenturyTel of Central Wisconsin, CenturyTel of Northern Wisconsin, CenturyTel of Northwest Wisconsin, CenturyTel of the Midwest – Kendall, CenturyTel of the Midwest – Wisconsin, Chequamegon Telephone Cooperative, Chibardum Telephone Cooperative, Frontier Communications of Wisconsin, Midway Telephone Company, Mt. Vernon

SUMMARY

The issues being addressed in *the Alltel Communications Inc. Petition for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Wisconsin* (Petition) are currently being considered by the Federal-State Joint Board on Universal Service (Joint Board). ILEC-WSTA requests the Commission refrain from taking substantive action on the Petition until a recommendation by the Joint Board and subsequent decision by the Commission in an anticipated rulemaking proceeding associated with such Joint Board recommendation.

If the Commission determines that it must decide the Petition before such action by the Joint Board and the Commission, ILEC-WSTA requests the Commission rule that the service areas of the rural telephone companies identified in the Petition not be redefined for the following reasons:

- The Telecommunications Act of 1996 (Act) provides that a rural telephone company's "service area" is the company's "study area" unless and until the Commission and the States establish a different definition of service area for the rural telephone company, *after taking into account recommendations of a Joint Board*. The Joint Board recommended the Commission, "...retain the current study areas of rural telephone companies as service areas for such companies."⁵
- The Commission stated, "we agree with the Joint Board that, at this time, retaining the study areas of rural telephone companies as the rural service areas

Telephone Co., Stockbridge & Sherwood Telephone Company, Telephone USA of Wisconsin, and West Wisconsin Telephone Cooperative.

⁵ *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 12 FCC Rcd 87, 179 ¶172 (1996) (Joint Board Recommendation)

is consistent with section 214(e)(5) and the policies objectives underlying section 254”⁶ This remains true to date.

- The potential for disaggregation of high-cost support under Rule 54.315 is not sufficient justification for redefining “service areas” under Rule 54.207.
- Alltel could serve all of the rural telephone companies’ service areas, including areas outside of its license areas, through roaming or resale of a wireless or wireline carrier’s service. Instead it desires to avoid the directive in Section 214 by seeking a redefinition to avoid providing service to areas it would rather not serve.
- The purpose of Section 254 is the preservation and advancement of universal service, not the promotion of competition.

DISCUSSION

The Commission has referred to the Joint Board for discussion and a recommendation the issue of redefinition of service area for rural telephone companies and other related issues.⁷ Redefinition of rural ILEC service areas is a broad issue of national concern. There have been at least three similar petitions filed with the Commission in the past four months.⁸

⁶ *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8881 ¶189 (1997) (Universal Service Order)

⁷ *See Federal-State Joint Board on Universal Service*, Order, CC Docket 96-45, 17 FCC Rcd 22642 (2002) (Universal Service ETC Rules Revision Order).

⁸ *Public Notice*, CC Docket No. 96-45, DA 03-2641 (rel. Aug. 12, 2003) Minnesota Public Utilities Commission; *Public Notice*, CC Docket No. 96-45, DA 03-2859 (rel. Sept. 9, 2003) Colorado Public Service Commission; and *Public Notice*, CC Docket No. 96-45, DA 03-3056 (rel. Oct. 6, 2003) Maine Public Utilities Commission

I. Wait for the Joint Board's Recommendation

The Universal Service ETC Rules Revision Order⁹ directs the Joint Board to address issues relating to rural high cost support and competitive service areas. ILEC-WSTA requests the Commission to find that Alltel's Petition is part of this broader proceeding in which the Joint Board will provide a recommendation. This recommendation will likely form the basis for a Proposed Rulemaking and assure that this industry-wide concern will be adequately addressed.

ILEC-WSTA requests the Bureau to initiate a proceeding to consider this Petition. The Bureau took this step with a similar petition filed by the Minnesota Public Utility Commission.¹⁰ This step is important because it enables the Bureau to investigate the important policy questions generated by this Petition. Equally important, it will prevent the redefinition from occurring by default, since the Petition is deemed approved within 90 days unless a proceeding is initiated.¹¹ The issues involved are too important to be left to default and too complicated to be decided fairly without the statutorily required input from the Joint Board.

II. The Only Joint Board Recommendation To Date is to Retain the Study Areas of Rural Telephone Companies as Their Service Areas.

The Joint Board clearly stated in its recommendation, "...that the Commission retain the current study areas of rural telephone companies as the service areas for such

⁹ *Federal-State Joint Board on Universal Service*, Order, CC Docket 96-45, 17 FCC Rcd 22642 (2002) (Universal Service Portability Order).

¹⁰ *Wireline Competition Bureau Initiates Proceeding to Consider the Minnesota Public Utilities Commission Petition to Redefine Rural Telephone Company Service Areas in the State of Minnesota*, CC Docket No. 96-45, DA 03-3594 (rel. Nov. 7, 2003)

¹¹ 47 C.F.R. § 54.207(c)(3). If the Commission did not initiate a proceeding within 90 day of the release of the Public Notice, the definition proposed by Alltel would be deemed approved. 47 C.F.R. § 54.207(c)(3)(ii).

companies.”¹² In its Petition Alltel misconstrues the Joint Board’s recommendations that redefinition is possible if the concerns of the Joint Board are addressed. The Joint Board did identify some future concerns that may be addressed at when it considers a revision to its recommendation. However, the Joint Board’s recommendation did not state or imply that the state commission could redefine the service areas of rural telephone companies by attempting to address those concerns even if that redefinition is conditioned on the Commission’s approval.¹³ Such a redefinition can not occur without a revised recommendation from the Joint Board.

The Commission stated its support for the Joint Board recommendation. “...we agree with the Joint Board that, at this time, retaining the study areas of rural telephone companies as the rural service areas *is consistent with section 214(e)(5) and the policy objectives underlying section 254.*”¹⁴

III. The Potential for Disaggregation of High Cost Support Under Rule 54.315 is Not Sufficient Justification for Redefining “Service Areas” Under Rule 54.207.

Alltel claims that because rural ILECs can request to disaggregate high cost support and some rural ILECs have filed such plans, the risk of “cream skimming” can be minimized. The PSCW concludes that due to the MAG¹⁵ decision the concerns about “cherry picking” and “cream skimming” are largely moot.¹⁶ However, disaggregation of high cost support has not taken place throughout the area for which Alltel seeks ETC status. Any attempt to disaggregate high cost support made by the ILECs in response to

¹² Joint Board Recommendation, 17 FCC Rcd at 179 ¶172.

¹³ *Id.*, ¶¶172-174

¹⁴ *Id.*, ¶189

¹⁵ *In the Matter of Multi-Association Group (MAG) Plan*, FCC 01-157 (rel. May 23, 2001), ¶147.

the designation of Alltel as an ETC and any service area redefinition would require state commission action and approval. The timing and process for obtaining state commission approval is unclear. Any high cost support disaggregation plan only ameliorates the mismatch between the ILEC and Alltel service area; it does not solve it.

Further, only 5 of the 14 rural telephone companies to whom the Petition is directed have disaggregated their high cost support. Even those service areas may not have been disaggregated to address Alltel's redefining request.

IV. Alltel Can Serve All the Rural Telephone Companies' Service Areas, but Seeks Redefinition To Avoid That Obligation.

The PSCW approved awarding Alltel ETC status based on several expectations including: increase competition, increase consumer choice, may spur infrastructure deployment and encourage further efficiency and productivity gains, provide new technologies and a mobility option.¹⁷ However, by redefining and making the service areas for some rural telephone companies smaller, the PSCW is in fact denying the customers in those excluded exchanges these benefits. That is not in the public interest and should not be permitted. If promotion of competition, consumer choice, deployment of infrastructure, efficiency, productivity, provision of new technologies and a mobility option are the true reason for seeking and granting of ETC status then the redefinition of rural telephone companies service areas into smaller areas restricts the availability of those benefits and should not be granted. Section 214(e)(1)(A) of the Act requires provision of service throughout the service area...*either using its own facilities or a*

¹⁶ PSCW Decision p. 11.

¹⁷ Application of ALLTEL Communications, Inc. et al for Designation as an Eligible Telecommunications Carrier in Wisconsin, Public Service Commission of Wisconsin Final Decision in Docket 7131-TI-101 (mailed Sept. 30, 2003) p. 8.

combination of its own facilities and resale of another carrier's service...(Emphasis Added). For the rural telephone companies' service areas that Alltel claims it cannot serve, it can resell both wireless and wireline carriers services. It is likely that Alltel has roaming agreements with wireless carriers in each rural telephone company service area so nothing more is needed to provide service to customers in those service areas. As a consequence, if the Commission is interested in promoting competition for all Americans in all markets, then it should deny the Alltel Petition because Alltel's redefining allows it to redline certain parts of the Rural ILEC's service areas that Alltel deems undesirable.

V. The Purpose of Section 254 of the Act is for the Preservation and Advancement of Universal Service, Not Promotion of Competition.

While the Act has the dual goals of preserving universal service and fostering competition, the Act is very clear on the purposes of the Universal Service Fund. Section 254(b) states, "Universal Service Principles - The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:" None of the listed principles include the promotion of competition. So fostering competition is, at best, a secondary goal of the Universal Service Fund.

In rural and high cost areas, such as the areas served by Alltel in Wisconsin, the law is specific. It provides, "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably

comparable to rates charged for similar services in urban areas.”¹⁸ Again there is nothing about promoting competition. Universal Service Funds are provided for assuring that comparable services at comparable rates will be in rural areas as well as the urban areas.

CONCLUSION

The ILEC-WSTA encourages the Commission to initiate a proceeding to address the issues raised in the Petition. The questions and issues raised in the Petition are too broad and too common to be addressed on a case-by-case basis. The balancing of the dual goals of preserving universal service while fostering competition as they relate to the Universal Service Fund are difficult and complex. With the demands on the Fund growing rapidly, we must be concerned that it will remain sufficient to provide the support needed to maintain universal service. These concerns are being addressed in Universal Service ETC Rules Review Order.

In the alternative the ILEC-WSTA requests the Commission deny the Petition’s request to redefine the service areas for the 14 rural telephone companies service areas.

Respectfully submitted,

**LOCAL EXCHANGE
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¹⁸ 47 C.F.R. § 254(b)(3)

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